

09/388,069

Attorney Docket No. 353-100

Art 2873
TM



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

STEPHEN LEROY POLLARD

Serial No.: 09/388,069

Filed: 9/1/1999

For: COMFORT OPTICS VISOR

-) Group Art Unit: 2873
-) Examining Attorney: Hung X Dang
-)
-) Pasadena, California
-) Date: June 13, 2005
-)

I certify that this document and fee is being deposited on June 13, 2005 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


SALLY SHORE

Date: June 13, 2005

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the Office Action mailed April 14, 2005.

In paragraphs 2,3 and 5 the Examiner objects to alleged “new matter” under 35 U.S.C. 132 (Paragraph 2); to the same “new matter” as the sole apparent basis for the rejection under 35 U.S.C. 112, first paragraph (Paragraph 3); and as the reason for the rejection on Chang et al. United States Patent No. 5,920,371 in view of Leonardi et al. United States Patent No. 5,642,178 under 35 U.S.C. 103(a) as maintained in Paragraph 4 and as subsequently set forth in Paragraph 5.

The “new matter” is alleged to be in the words “integrally attached side bands extending outward from at each side of said expansion loop at its upper end at said split and terminating in a free distal end”.

We attach herewith as Attachment A Figures 1 to 3 of the drawings on file together with the elements of claim 7 shown thereon. There is no new matter. The structure of claim 7 is as shown in these Figures, see Attachment B which is claim 7 as read on the drawings. The rejections for “new matter” should be withdrawn.

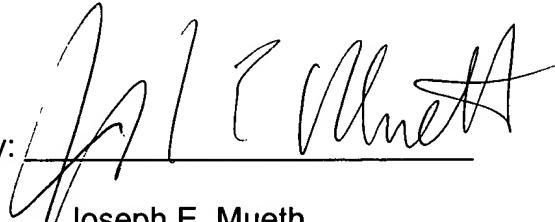
The rejection on prior art should be withdrawn. As the Examiner appears, at least tacitly, to acknowledge, the Chang et. al. and Leonardi et al. patents do not render obvious all of the elements that make up the structure of claim 7. Thus, even when combined, Chang et al. and Leonardi do not point to the subject matter of claim 7.

This case is similar to several of the cases discussed in Vas-Cath Inc. v. Mahurkar, 19 USPQ 2d 1111 (Fed. Cir. 1991). For convenience a copy of this discussion is attached as Attachment C. See Vas-Cath at pp. 1117-1118.

The Notice of Allowance is requested.

Respectfully submitted,

By:



Joseph E. Mueth

Dated: June 13, 2005

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